

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CARMINE P.,

Plaintiff,

-against-

6:23-CV-467 (LEK/TWD)

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

MEMORANDUM-DECISION AND ORDER

I. INTRODUCTION

Plaintiff filed this action pursuant to 42 U.S.C. § 405(g) seeking judicial review of a final decision by the Commissioner of Social Security. Dkt. No. 1. Both parties filed briefs supporting their respective positions, Dkt. No. 10 (“Plaintiff’s Motion”), Dkt. No. 13 (“Defendant’s Motion”), and Plaintiff filed a reply, Dkt. No. 14. On August 7, 2024, the Honorable Therèse Wiley Dancks, United States Magistrate Judge, issued a report and recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(d). Dkt. No. 16 (“Report and Recommendation”). In the Report and Recommendation, Judge Dancks recommended granting Plaintiff’s Motion, denying Defendant’s Motion, and remanding the case to the Social Security Administration for further administrative proceedings. See id. at 2.

No party has filed objections to the Report and Recommendation. For the reasons that follow, the Court adopts the Report and Recommendation in its entirety.

II. BACKGROUND

The Court presumes familiarity with the factual allegations detailed in the Report and Recommendation. See id. at 2.

In the Report and Recommendation, Judge Dancks assessed Plaintiff's argument that "the ALJ's RFC determination is not supported by substantial evidence." Id. at 6. In particular, Judge Dancks looked at whether the ALJ had appropriately considered and discussed findings in the medical record that were contrary to the ALJ's determination of Plaintiff's residual functional capacity ("RFC"). See id. at 7–9. Judge Dancks determined that the ALJ had failed to adequately consider multiple medical determinations assessing Plaintiff's gait pattern and symptoms including pain, numbness, and tingling. See id. Accordingly, Judge Dancks recommended remand for further consideration of the contrary findings in Plaintiff's medical record. See id. at 10–11.

III. LEGAL STANDARD

"Within fourteen days after being served with a copy [of the Magistrate Judge's report and recommendation], any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court." 28 U.S.C. § 636(b)(1)(C); see also L.R. 72.1. However, if no objections are made, a district court need only review a report and recommendation for clear error. See DiPilato v. 7-Eleven, Inc., 662 F. Supp. 2d 333, 339 (S.D.N.Y. 2009) ("The district court may adopt those portions of a report and recommendation to which no timely objections have been made, provided no clear error is apparent from the face of the record."). Clear error "is present when upon review of the entire record, the court is left with the definite and firm conviction that a mistake has been committed." Rivera v. Fed. Bureau of Prisons, 368 F. Supp. 3d 741, 744 (S.D.N.Y. 2019) (cleaned up). Upon review, a court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C).

IV. DISCUSSION

No party objected to the Report and Recommendation “[w]ithin fourteen days after being served with a copy” of it. 28 U.S.C. § 636(b)(1)(C). Accordingly, the Court reviews the Report and Recommendation for clear error. See DiPilato, 662 F. Supp. 2d at 339. Having found none, the Court approves and adopts the Report and Recommendation in its entirety.

V. CONCLUSION

Accordingly, it is hereby:

ORDERED, that the Report and Recommendation, Dkt. No. 16, is **APPROVED and ADOPTED in its entirety**; and it is further

ORDERED, that Plaintiff’s Motion for judgment on the pleadings, Dkt. No. 10, is **GRANTED**; and it is further

ORDERED, that Defendant’s Motion for judgment on the pleadings, Dkt. No. 13, is **DENIED**; and it is further

ORDERED, that the Commissioner’s decision is **REVERSED AND REMANDED** pursuant to sentence four of 42 U.S.C. § 405(g) for further administrative proceedings; and it is further

ORDERED, that the Clerk serve a copy of this Memorandum-Decision and Order on all parties in accordance with the Local Rules.

IT IS SO ORDERED.

DATED: August 26, 2024
Albany, New York


LAWRENCE E. KAHN
United States District Judge